## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

YETHA IDRISS LUMUMBA,

Plaintiff,

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v. : File No. 1:13-cv-158-jgm-jmc

HAYWOOD MACK,
MATTHEW ENGELS,

CHAD M. PRESSEY,

.

Defendants. :

## ORDER

The Magistrate Judge's Report and Recommendation was filed September 23, 2013. (Doc. 17.) After <u>de novo</u> review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. <u>See</u> 28 U.S.C. § 636(b)(1).

Defendants Engels and Pressey's Motion to Dismiss (Doc. 13) is DENIED as moot, and because they are not identified as parties in the amended complaint (Doc. 15), they shall be terminated as Defendants.

Defendant Mack's Motion to Dismiss (Doc. 6) is GRANTED, insofar as the motion seeks dismissal of Plaintiff's § 1983 and Title 18 claims. The motion is DENIED with respect to Plaintiff's state law claims, and he shall be afforded an opportunity to amend his complaint. If he chooses to file an amended pleading, he shall do so on or before November 29, 2013. The pleading must be entitled "Second Amended Complaint" and include a jurisdictional statement. The Second Amended Complaint will replace all prior complaints, thereby invalidating the original Complaint (Doc. 5) and the

subsequent "Verified Complaint" (Doc. 15). Failure to file a timely Second Amended Complaint, or to allege facts establishing diversity jurisdiction, may result in dismissal of this case without prejudice.

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 5<sup>th</sup> day of November, 2013.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge